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Attorneys for the Plaintiff
United States Department of Labor

UNITED STATES DISTRICT COURT
FOR THE
NORTHERN DISTRICT OF CALIFORNIA

HILDA L. SOLIS,
Secretary of Labor,
United States Department of Labor,

Plaintiff,

v.

CUONG VIET DO, an individual, **THE MILI GROUP, INC.** A California corporation, and
THE MILI GROUP RETIREMENT PLAN,
an employee benefit plan.

Defendants.

) Case No. C10-03823 LHK

) **MODIFICATION OF THE MAY 27,**
) **2011 CONSENT JUDGMENT &**
) **ORDER**

1 Plaintiff HILDA L. SOLIS, Secretary of Labor, United States Department of La-
2 bor, Employee Benefits Security Administration (“Secretary”) and Defendants Cuong
3 Viet Do, The Mili Group, Inc. and The Mili Group Retirement Plan (“Plan), an em-
4 ployee benefit plan respectfully request this Court to Modify the Consent Judgment &
5 Order that it approved on May 27, 2011 as listed below:

6
7 IT IS HEREBY **ORDERED**, **ADJUDGED**, and **DECREED** that the May 27,
8 2011 Consent Judgment and Order is fully incorporated herein by reference with the ex-
9 ception of Paragraph 5, which is modified as follows:

10 5(a). Michael J. FitzGibbons, FitzGibbons and Company, Inc., 8300 N. Hayden
11 Rd., Suite A100, Scottsdale, AZ 85258, is hereby appointed as an “Initial Independent Fi-
12 duciary” to the Plan and has the following duties and responsibilities:

13 (1). The Initial Independent Fiduciary shall have the discretionary authority to
14 collect, marshal and administer all of the assets of the Plan, including managing, market-
15 ing, leasing and selling the real property owned by the Plan, described as Unit 718,
16 Meadow Lake Palm Harbor Condominiums, 2690 Coral Landings Boulevard, Palm
17 Harbor, Florida 34684 (“Condominium” or “Florida Property”) and to take further action
18 with respect to the Plan as appropriate. Within 30 days of the sale of the Florida Prop-
19 erty, the Initial Independent Fiduciary shall transfer all remaining Plan assets (less the
20 amounts necessary for payment of Court approved fees and expenses as described in pa-
21 ragraphs 5a(7) & (8)) to be held in trust for the Plan by the Successor Independent Fidu-
22 ciary named in paragraph 5(b), *infra*, who shall have the discretionary authority to col-
23 lect, marshal, pay out and administer all of the assets of the Plan, and to take further ac-
24 tion with respect to the Plan as appropriate, including the orderly termination of the Plan
25 when all of the assets have been distributed to all eligible participants and beneficiaries
26 and it is prudent to do so;
27
28

1 (2). The Initial Independent Fiduciary shall have all the rights, duties, discre-
2 tion, and responsibilities of a trustee, fiduciary, and Plan Administrator under ERISA,
3 except as limited by this Order;

4 (3). The Initial Independent Fiduciary is authorized to delegate or assign fiduci-
5 ary duties as appropriate and allowed under the law and may retain such as assistance as
6 he may require, including attorneys, accountants, real estate professionals, actuaries, and
7 other service providers;

8 (4). The Initial Independent Fiduciary shall have full access to all data, informa-
9 tion, and calculations in the possession of the respective Plans and under their control,
10 including information and records maintained by the custodial trustees or service pro-
11 viders of the Plan;

12 (5). The Initial Independent Fiduciary is authorized to give instructions respect-
13 ing the disposition of assets of the Plan; and

14 (6). The Initial Independent Fiduciary shall comply with all applicable rules and
15 laws;

16 (7) The Initial Independent Fiduciary shall be bonded as required by ERISA §
17 412, 29 U.S.C. § 1112.

18 (8). Pursuant to Article 2, Section 3.2.7 of the governing Plan document, the
19 Initial Independent Fiduciary's reasonable fees and expenses may be charged against the
20 assets of the Plan;

21 (9) Following the entry of this Consent Judgment & Order by the Court, the
22 Initial Independent Fiduciary shall be required to present to the Court and the Secretary,
23 on a quarterly basis, an itemized application for the payment of fees and expenses ("Fee
24 Application"). The Fee Application shall include the hourly rates of pay, dates and
25 hours of work, a description of work performed, and an itemized statement of expenses.
26 The Initial Independent Fiduciary's hourly fee schedule is attached hereto as Exhibit D
27 and incorporated herein. The Secretary requests that the Fee Application shall be
28 deemed approved, unless the Secretary specifically objects to the Fee Application within

1 fifteen business days. In the event the Secretary objects to the Fee Application, the Sec-
2 retary requests that the Court decide whether the Independent Fiduciary's application
3 should be granted;

4 (10). The Initial Independent Fiduciary shall be paid the approved fees and ex-
5 penses after the sale of the Florida Property;

6 (11). The Initial Independent Fiduciary shall notify the Successor Independent
7 Fiduciary at least 30 days prior to the closing of the sale of the Florida Property.

8 (12). Upon the final sale of the Florida Property and the subsequent transfer of
9 the Plan assets to the Successor Independent Fiduciary, Mr. FitzGibbons, FitzGibbons
10 and Company, Inc., shall be removed as the Independent Fiduciary of the Plan.

11 5(b). Upon the sale of the Florida Property, Jeanne Brynt, Receivership Man-
12 agement Inc., 783 Old Hickory Blvd., Suite 255, Brentwood, TN 37027, shall be ap-
13 pointed as the Successor Independent Fiduciary to the Plan. Prior to the sale of the Flor-
14 ida Property and until the transfer of Plan assets described in Paragraph 5(a)(1), the Suc-
15 cessor Independent Fiduciary shall have no fiduciary responsibilities. Immediately upon
16 receipt of the transferred Plan assets pursuant to Paragraph 5(a)(1), the Successor Inde-
17 pendent Fiduciary shall have the following duties and responsibilities:

18 (1). The Successor Independent Fiduciary shall have the discretionary authority
19 to collect, marshal, pay out and administer all of the assets of the Plan, and to take fur-
20 ther action with respect to the Plan as appropriate, including termination of the Plan
21 when all of the assets have been distributed to all eligible Plan participants and benefici-
22 aries;

23 a. The eligible Plan participants and beneficiaries entitled to alloca-
24 tions/distributions pursuant to the governing Plan Documents and the Consent Judgment
25 & Order are identified on Exhibit A attached to the May 27, 2011 Consent Judgment &
26 Order; and

27 b. In allocating any benefits due under the Plan and this Consent Judg-
28 ment & Order, the Successor Independent Fiduciary shall, pursuant to Article 3, section

1 2.3.1(e) of the Plan Document, adjust any amounts due to Minha Do by recognizing that
2 she obtained a \$50,000 distribution from the Plan in July of 2007.

3 (2). The Successor Independent Fiduciary shall, pursuant to the procedures out-
4 lined in the Employee Benefits Security Administration's Field Assistance Bulletin
5 2004-02, exercise reasonable care and diligence to identify and locate each participant
6 and beneficiary of the Plan who is eligible to receive a distribution under the terms of the
7 Plan;

8 (3). The Successor Independent Fiduciary shall have all the rights, duties, dis-
9 cretion, and responsibilities of a trustee, fiduciary, and Plan Administrator under ERISA;

10 (4). The Successor Independent Fiduciary is authorized to delegate or assign fi-
11 duciary duties as appropriate and allowed under the law and may retain such as assis-
12 tance as he may require, including attorneys, accountants, actuaries, and other service
13 providers;

14 (5). The Successor Independent Fiduciary shall have full access to all data, in-
15 formation, and calculations in the possession of the respective Plans and under their con-
16 trol, including information and records maintained by the custodial trustees or service
17 providers of the Plan;

18 (6). The Successor Independent Fiduciary is authorized to give instructions re-
19 specting the disposition of assets of the Plan;

20 (7). The Successor Independent Fiduciary shall comply with all applicable rules
21 and laws;

22 (8) The Successor Independent Fiduciary shall be bonded as required by
23 ERISA § 412, 29 U.S.C. § 1112.

24 (9). Pursuant to Article 2, Section 3.2.7 of the governing Plan document, the
25 Successor Independent Fiduciary's reasonable expenses and fees may be charged against
26 the assets of the Plan;

27 (10). Following appointment, the Successor Independent Fiduciary shall be re-
28 quired to present to the Court and the Secretary an itemized application for the payment

1 of fees and expenses on a quarterly basis (except that, if all the proceeds from the sale of
2 the Florida Property have been distributed and there are no assets in the Plan, the Suc-
3 cessor Independent Fiduciary may submit this application on an annual basis, until the
4 commencement of the payment plan under paragraph 6 (b) of the May 27, 2011 Consent
5 Judgment & Order). The Fee Application shall include the hourly rates of pay, dates
6 and hours of work, a description of work performed, and an itemized statement of ex-
7 penses. The Initial Independent Fiduciary's hourly fee schedule is attached hereto as
8 Exhibit E and incorporated herein. The Secretary requests that the Fee Application shall
9 be deemed approved, unless the Secretary specifically objects to the Fee Application
10 within fifteen business days. In the event the Secretary objects to the Fee Application,
11 the Secretary requests that the Court decide whether the Independent Fiduciary's appli-
12 cation should be granted.

13 5(c). Within ten days of the entry of this Modification of the May 27, 2011 Con-
14 sent Judgment & Order by the Court, Defendant Do shall deliver to the Initial Independ-
15 ent Fiduciary, identified in Paragraph 5(a), all Plan documents, and all other documents
16 related to the Plan, including all documents related to the ownership of the Florida Prop-
17 erty. In addition, Defendant Do shall execute all necessary documents to transfer title of
18 the Florida Property as directed by the Initial Independent Fiduciary.

19
20 The Court directs the entry of this Modification to the May 27, 2011 Consent
21 Judgment & Order as a final order.

22
23
24 Dated: July 7, 2011

25 
26 Lucy H. Koh,
27 United States District Judge
28

1 Entry of this Modification of the May 27, 2011 Consent Judgment & Order is
2 hereby consented to:


3 Dated: 6-23-11

M. PATRICIA SMITH
Solicitor of Labor

5 LAWRENCE BREWSTER
6 Regional Solicitor

7 DANIEL J. CHASEK
8 Associate Regional Solicitor

9 DANIELLE L. JABERG
10 Counsel for ERISA

11
12 By: 
13 BORIS ORLOV
14 Trial Attorney

15 Attorneys for HILDA L. SOLIS, Secretary of
16 Labor,
United States Department of Labor

17
18 Dated: _____

19 LARS T. FULLER, FULLER LAW FIRM
20 Attorneys for Defendants

21 Dated: _____

22 CUONG VIET DO

23 Dated: _____

24 THE MILI GROUP, INC.
25 CUONG VIET DO, President

26 Dated: _____

27 THE MILI GROUP RETIREMENT PLAN
28

1 Entry of this Modification of the May 27, 2011 Consent Judgment & Order is
2 hereby consented to:

3 Dated: _____

M. PATRICIA SMITH
Solicitor of Labor

5 LAWRENCE BREWSTER
6 Regional Solicitor

7 DANIEL J. CHASEK
8 Associate Regional Solicitor

9 DANIELLE L. JABERG
10 Counsel for ERISA

12 By: _____
13 BORIS ORLOV
14 Trial Attorney

15 Attorneys for HILDA L. SOLIS, Secretary of
16 Labor,
United States Department of Labor

18 Dated: 6-23-11


19 LARS T. FULLER, FULLER LAW FIRM
20 Attorneys for Defendants

21 Dated: 6-23-11


22 CUONG VIET DO

23 Dated: 6-23-11


24 THE MILI GROUP, INC.
25 CUONG VIET DO, President

26 Dated: 6-23-11


27 THE MILI GROUP RETIREMENT PLAN
28

EXHIBIT D

**FitzGibbons and
Company, Inc.**

 8300 North Hayden Road, Suite A100
 Scottsdale, Arizona 85258

 Phone: (480) 948-4351
 Fax: (480) 443-5924

COMPENSATION AND EXPENSES PAYABLE
I. RATES PAYABLE FOR EXPERT FIDUCIARY SERVICES

	<u>Hourly Rate</u>
Michael J. FitzGibbons	\$200.00
Staff	\$100.00 to \$185.00

II. REIMBURSABLE EXPENSES

<u>Expense Item</u>	<u>Reimbursement Rate</u>
Long distance telephone	Actual cost
Overnight delivery service	Actual cost
Fax transmissions	\$0.25 per page
Photocopies	\$0.10 per page
Rail	Actual cost
Airline travel	Actual cost/Coach only
Hotels	Actual room rates and taxes
Rental car or taxi fare	Actual cost
Parking	Actual cost
Bonds and other incidentals	Actual cost

III. UNACCOUNTABLE PER DIEM PER PERSON

<u>Per Diem</u>	<u>Rate</u>
Full day	GSA
Partial day	GSA

EXHIBIT E

Receivership Management, Inc.

783 Old Hickory Blvd., Suite 255 Brentwood, TN 37027 (615) 370-0051 Fax (615) 373-4336

Effective July 1, 2008

Fee Schedule for Receivership Management, Inc:

Jeanne Barnes Bryant	\$150 per hour
Rob Moore	\$130 per hour
Billy Spaulding	\$110 per hour
Sarah Forton	\$45 per hour

Information Tech Consultant	\$65 per hour
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Overhead charges are allocated pro-rata based upon the number of hours billed to a receivership. Currently overhead is billed at \$11.00 per hour. Overhead includes expenses of a general nature which cannot be charged to a specific receivership. Examples include depreciation on equipment, insurance, etc.

Rent is allocated to a receivership based on a physical presence (ie. Files, records, and other documentation) at the RMI location and the time spent on that receivership. It is by its nature an estimate and is normally set at the beginning of each quarter and remains constant during that quarter. The allocation is reviewed each month and if there is a material change in either the physical presence occupied or time spent on the receivership, the rent allocation is adjusted to reflect current conditions.

Office Expenses which can be specifically identified to a receivership (eg. telephone, postage, copies etc.) are charged to the receivership as incurred.

Travel: Per Diem-\$39.00 for meals and incidentals (first and last day of travel 75% of per diem amount allowed). Per Diem paid only if overnight travel is required. Transportation: By private car: 50 cents per mile; By common carrier: Actual ticket cost at coach. Lodging: Actual amount charged.